



Nicaragua<sup>1</sup> is the largest country in Central America bordering both the Caribbean Sea and the North Pacific Ocean, between Costa Rica and Honduras.

The Pacific Coast of Nicaragua was settled as a Spanish colony from Panama in the early 16<sup>th</sup> century. Independence from Spain was declared in 1821 and the country became an independent republic in 1838.

### Economy

Over the past 12 years, Nicaragua has witnessed a very significant transformation: from a nation torn by war, with its economy plunged into chaos, it has re-emerged as an inclusive democracy where the foundations for economic growth and sustainable development are being laid. Notwithstanding this progress, Nicaragua still remains among the poorest countries in the Western Hemisphere.

In actual terms, Nicaragua began its free market reforms in 1991. Despite some setbacks, it has made dramatic progress. The economy began expanding in 1994 and grew 2.5 percent in 2001, with overall GDP reaching US\$2.44 bn in 2001. One of the key engines of economic growth has been production for export. Although traditional products, such as coffee, meat, and sugar continued to lead the list of Nicaraguan exports, the fastest growth is now in non-traditional exports.

Nicaragua is primarily an agricultural country, but construction, mining, fisheries, and general commerce also have been expanding during the last few years. However, Nicaragua suffers from persistent trade and budget deficits and a high debt-service burden, leaving it highly dependent on foreign assistance

PROFILE	
Population:	5.5 million***
GDP (Current US\$):	4.1 billion***
Per Capita Income: (Current US\$)	740 (Atlas method)*** 2,470 (at PPP.)
Land Area:	130.0 thousand sq kms.***
Life Expectancy:	68.8 years**
Literacy (%):	76.7** (of ages 15 and above)
HDI Rank:	118
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

### Competition Evolution and Environment

Reform of the Nicaraguan economy started in 1990s. Since the early 1990s, Nicaragua has taken significant steps towards establishing a market-based, outward-oriented economy, reversing the import-substitution policies of earlier years and addressing severe economic imbalances.

The liberalisation of the trade, foreign exchange, and investment regimes, progress in deregulation, and ongoing public sector reforms, have resulted in a resumption of economic growth, the reduction of inflation and a decline in unemployment. As a result, foreign investment in Nicaragua grew and diversified under the guarantees and incentives provided by the regulatory framework.

Furthermore, the country undertook autonomous reforms in trade and related policies, while pursuing greater

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1 Some of the information in this introduction has been compiled from the CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/yi.html>

integration into the world economy, through the completion and implementation of the results of the WTO's Uruguay Round.

Driven by constitutional reform, substantial changes were also brought about in its legislative and institutional framework, agreements with multilateral financial institutions, and the incorporation of regional and multilateral trade commitments. In this context, legislation has been passed on tariffs, concessional entry, standards, consumer protection, export restrictions, and export assistance.

In mid 1999, preparations commenced on enacting a general foreign trade law, and legislation on customs valuation, temporary admission, government procurement, sanitary and phytosanitary measures, domestic processing of fishery, competition policy, industrial property rights and copyrights etc.

So far, action has been taken to defend consumer rights but no competition policy regulations have been put in place.

Until now, several steps have been taken towards establishment of competition law which first started with the technical assistance from the German agency, GTZ for the competitive transformation of the economy, so as to create a competition policy framework. The first draft bill was prepared and has gone through revisions on numerous occasions. The last version of the Bill dates back to the year 2000. One of the motivations behind the enactment was the Government's insistence on working towards greater competition in the markets.

### **Competition Law**

Currently, Nicaragua has a draft competition bill proposal. Moreover, various Articles, such as 99, 104 and 105 of the Political Constitution speak about anticompetitive practices and the need to defend the concept of economic efficiency and the effective allocation of resources. There is a clear awareness on the part of economic agents and national authorities on the pressing need to raise productivity and competitiveness. Nevertheless, the role of competition law and policy in Nicaragua is still very dim and calls for more efforts towards lobbying at the national level.

Although a draft Bill proposal exists, it also suffers from certain weaknesses:

- Insufficient consideration has been given to competition advocacy;
- Merger control provisions not provided;
- The status of the competition authority not clear (whether autonomous or dependent); and

- It establishes prior administrative authorisations to those practices that restrain firm rivalry and which could have adverse effects on free competition.

However, Nicaragua currently has an exclusive legislation on Intellectual Property, Law No. 380 *Trademarks and other Distinctive signs Law* and its Bylaws are in place. This regulation has been sustained and fortified by the establishment of the necessary mechanisms for the effective protection of the acquired rights, complemented with treaties and international conventions.

For the defence of unfair competition, the referred trademark legislation provides "that the holder of a trademark previously registered or in process of registration, will have the right to demand to the competent authority the establishment and declaration of the illicit character of a presumed act of unfair competition against his right. However, this holder will have to prove the continuous and uninterrupted use of his trademark".

### **Institutions and its Competencies**

As far as the institutional framework is concerned, in 1998, the General Directorate for Competition and Market Transparency (DGCTM) was created to promote free competition, efficiency and the defense of consumer rights in all the internal markets for goods and services. The Directorate works as a technical consulting agency and not as a specialised professional agency.

Besides, it has the functions of organisation, direction and supervision of the national standardisation and metrology systems which consists of four Directorates:

- The Competition and Deregulation Directorate;
- The Consumer Defense Directorate;
- The Directorate of Technology; and
- Directorate for Intellectual Property.

It works with the ultimate aim to protect consumers, by providing them with information regarding the market.

### **Anticompetitive Practices**

In Nicaragua, there is no single competition law, which governs the market. However, there exists literature on competition policy, which takes into account the following:

- provisions to prevent companies from entering into restrictive agreements;
- mechanisms to control abuse of dominant positions;
- tools to ensure competition among companies; and
- monitoring of M&As to avoid concentrations in the market.

Certain business practices such as high concentration, abuse of dominant position etc. in Nicaraguan market were discovered which would have been considered as anticompetitive in case there was a competition law or authority.

<i>Market</i>	<i>Prevailing Anticompetitive Practices</i>
Flour	Price-setting and production quotas agreements between competitors
Oil	Price-setting and production quotas agreements between competitors
Sugar	Price-setting and production quotas agreements between competitors
Soft Drinks	<ul style="list-style-type: none"> <li>• Price-setting and production quotas agreements between competitors</li> <li>• Vertical agreements</li> <li>• Exclusive distribution agreements</li> </ul>

It is evident from the above table that monopolistic practices are prevalent in the market and the government needs to put in rigorous efforts to prevent such practices in the Nicaraguan market.

### **Regulatory Framework<sup>2</sup>**

Nicaragua has made progress in the privatisation process, adopting a modern regulatory framework that contains special provisions or regulations on competition in specialised markets. Though Nicaragua has no special legislation on competition policy, there are some laws covering particular economic sectors that regulate industries such as: electric power, telecommunications, oil and financial markets.

- Law No. 125, April 10, 1991, ‘Law that creates the *Superintendencia* (Regulatory Body) for Banks and other Financial Institutions’;
- Law No 200, August 18, 1995, ‘Law on Telecommunications and Postal Services’;
- Law No. 277, February 6, 1998, ‘Law on Oil Distribution’. Chapter VI on promotion of competition;
- Law No. 272, April 23, 1998, ‘Electrical Industry Law’;
- Law No. 271, April 1, 1998, ‘Law for the Reform of the Organic Law of the Nicaraguan Institute of Energy’; and
- Consumer Protection Law.

### **Telecommunications Sector**

The law that regulates telecommunications in Nicaragua is the “*Ley General de Telecomunicaciones y Servicios Postales*” Law No 200, August 18, 1995. This law distinguishes the different kinds of services for which licenses can be granted.

In 1995, *Instituto Nicaragüense de Telecomunicaciones y Correos* (TELCOR), an independent authority has been established by the law, so as to separate the regulatory

functions from the operations functions concentrated in ENITEL, the Nicaraguan state-owned telecom industry.

TELCOR’s powers are: to decide the level of competition for each type of services; to modify the classification of services created by the law (a classification which is very confusing); to authorise transfer of control and share ownership to private companies (privatisation); to oversee transfers of licenses and of concessions (which will be granted by auction). It is intended to create a competitive environment.

Privatisation process of ENITEL, has been sluggish due to several legal or administrative obstacles.

### **Energy Sector**

According to Law No. 272, April 23, 1998, “*Electrical Industry Law*”, its activities comprise the generation, transmission, distribution, commercialisation, import and export of power.

The Nicaraguan Institute of Energy is the authority responsible for granting state licences to generation companies and transmission companies that use renewable sources of energy.

### **Consumer Protection**

The Consumer Protection Law No. 182 enacted in 1994, as well as its regulations promulgated in 1999, introduced product labelling standards and consumer rights to Nicaragua. The law establishes the Consumer Defence Directorate as the agency regulating consumer protection in Nicaragua.

The experiences of consumer protection system in the country has shown certain limitations and following is recommended:

- creation of a decentralised consumer protection system;
- elaboration of a National Consumer Protection Policy with the involvement of all agents so as to make consumers more informed and responsible;
- introducing concrete programmes and action to enable active participation of the business sector and media;
- developing inter-institutional cooperation mechanisms between the agency and the private sector to increase enforcement level of consumer protection norms; and
- develop collaboration programmes with consumer protection organisations.

In Nicaragua, the League of Consumer Defence (LIDECONI) is the main and oldest consumer organisation actively involved in the area of consumer issues.

<sup>2</sup> Global Competition Forum

### **Concluding Observations and Future Scenario**

The absence of a well-defined competition policy framework adversely affects the investment climate and the overall competitiveness of Nicaragua, which results in political and economic uncertainty and market distortions. Therefore, it is highly recommended for the Government to create such a framework as soon as possible.

Sectoral laws and authorities were created in order to mitigate to some extent the lack of a single competition

framework but that did not prove to be a good substitute for competition law. Thus, the need arises for a separate competition law and authority.

It is seen that the absence of competition culture among the economic agents acts as an obstacle in promotion of a competition culture. This needs to be promoted, especially at the level of industrial sectors.

### **Suggested Reading**

UNCTAD's Phase-I Report on COMPAL Programme "Strengthening Institutions and Capacities in the area of Competition and Consumer Protection Policies in Latin America"